

Date: November 8, 2007

Bayer 10,261-WCG
LeA 36130

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Bernd KLINKSIEK et. al.
Serial No. : 10/679,123
Filed : October 3, 2003
For : PROCESS FOR PRODUCING PULVERULENT ACTIVE
SUBSTANCE FORMULATIONS WITH ACOMPRESSIBLE
FLUIDS
Art Unit : 1615
Examiner : Snigdha Maewall

November 8, 2007

Mail Stop Amendment
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

In response to the Restriction Requirement dated 10/02/2007, Applicants elect the inventions of groups II and V, claims 16 to 36 and 40, drawn to a process for producing the pulverulent active substances, which Applicants' believe actually constitute a single group, with traverse. In the event that the Examiner does not find it possible to consolidate groups II and V into a single group, then Applicants' elect group II, with traverse.

The Examiner has imposed a 5-way restriction requirement, which Applicants believe is actually a 4-way restriction requirement, between claims 1-15, drawn to pulverulent active substance formulations, (denoted Group I by the Examiner), claims 16-36, drawn to a process for producing the pulverulent active substances, (denoted group II by the Examiner), claims 37-38, drawn to a method of applying the pulverulent active substance (denoted group III by the Examiner), claim 39 drawn to apparatus, (denoted group IV by the Examiner) and Claim 40, drawn to a process for producing the pulverulent active substances, (denoted group V by the Examiner).

Initially it must be recognized that both groups II and V are drawn to a process for producing the pulverulent active substances, and are classified in the identical class and subclass. Therefore, these two groups should be consolidated into one group. Upon such consolidation, Applicants' elect said consolidated group, with traverse. In the event the two groups are not consolidated, then Applicants elect group II, with traverse.

Reconsideration and withdrawal of the restriction requirement is respectfully requested. Any search of the product itself is certain to turn up processes for producing it, methods of applying it and apparatus for carrying out the process. Accordingly, no additional burden would be placed on the Patent Office in searching all four (or five, as the case may be) groups together. By contrast, a very great burden will be placed on Applicants if this restriction requirement is maintained. Applicants will be subjected to

four or five times the cost and effort in prosecuting four or five patent applications for an invention that should have been included in one, and will also be subjected to the continuing expense of maintaining four or five separate patents, whereas only one should be required to cover the full invention.

In addition, an additional burden will be placed on the public, in that the full scope of Applicants' invention will not be ascertainable from a single patent, and the public will have to find and study four or five patents to ascertain the full scope of Applicants' exclusive rights.

The great additional burden that will be placed on Applicants and the public in maintaining the restriction requirement is far greater than the slight, if any, effort that will be required of the Patent Office in withdrawing the Restriction Requirement.

It is therefore respectfully requested that the Restriction Requirement be withdrawn.

In the event that the Examiner does not find it possible to withdraw the Restriction Requirement, it is respectfully requested that the non-elected subject matter be rejoined with the elected subject matter upon allowance of elected subject matter.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, applicant requests that this be considered a petition therefor. Please charge the required Petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess to our Deposit Account No. 14-1263.

Respectfully submitted
NORRIS, McLAUGHLIN & MARCUS, P.A.

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WCG/tmo

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